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Loveland, Colorado 80538

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April 15, 2020

**VIA EMAIL AND OVERNIGHT MAIL**

Mr. Peter Magolske  
U.S. Environmental Protection Agency  
Office of Compliance and Enforcement  
M/S OCE-101  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101-3140

Re: Force Majeure Notification due to COVID-19  
Administrative Order on Consent, Docket No. RCRA-10-2009-0186  
Nu-West Industries, Inc. Conda Phosphate Operations

Dear Peter:

In accordance with Paragraph 116 of the above-referenced Administrative Order on Consent ("Consent Order"), this letter serves as Nu-West Industries, Inc.'s ("Nu-West") notification of a *force majeure* event. This event will delay or prevent performance of routine groundwater monitoring activities required by the Consent Order. As discussed below, because of the health risks presented by the COVID-19 pandemic, the state and federal governments' response thereto, and anticipated travel and access issues, a modification is necessary to the schedule for groundwater monitoring activities required under the Consent Order.

**Groundwater Monitoring**

Pursuant to the Consent Order, Nu-West conducts groundwater monitoring at the Conda Phosphate Operations (CPO) facility located near Soda Springs, Idaho in accordance with the EPA-approved Groundwater Monitoring Plan, Revision 3 (GWMP, dated November 12, 2014), the Quality Assurance Project Plan, Revision 4 (QAPP, dated May 19, 2016), and subsequent modifications approved by EPA. The groundwater monitoring program includes monthly and quarterly groundwater sampling at monitoring wells located throughout the CPO facility, which is currently owned and operated by Itafos Conda LLC ("Itafos"). The groundwater monitoring program also includes sampling at an off-site domestic well, owned by a private landowner.

### Force Majeure

In response to the COVID-19 pandemic, state and local governments have imposed work and travel restrictions to mitigate the spread of the disease and protect human health. In Idaho, the Idaho Department of Health and Welfare issued an Order to Self-Isolate (Self-Isolation Order), requiring all individuals living in the State of Idaho to self-isolate at their place of residence; individuals traveling to Idaho must self-quarantine for fourteen days. The Self-Isolation Order, as amended on April 15, 2020, will continue to be in effect until 11:59 p.m. on April 30, 2020 or until extended, rescinded, superseded, or amended in writing by the director of the Idaho Department of Health and Welfare.

Also in response to the pandemic, Itafos has restricted access to the CPO facility for contractors, vendors, suppliers, and customers, limiting site access only to those providing critical support for ongoing operation and maintenance of the facility; "turnaround" activities, when numerous contractor groups travel to and work at the facility to complete infrastructure and improvement projects, normally scheduled for May and June, has been postponed until September.

Nu-West has evaluated health and safety measures that might be implemented to minimize the risk of COVID-19 transmission by field sampling personnel conducting the groundwater monitoring activities, including additional personal protective equipment (PPE), sampling equipment disinfection procedures, social distancing where applicable, and remote coordination with CPO facility personnel.

While beneficial, these procedures will not completely eliminate the risk of COVID-19 transmission to sampling personnel, to others they may encounter during sampling activities, or during their travel. Moreover, the presence on-site of contractors performing routine groundwater sampling may interfere with the essential activities of facility personnel. In light of these factors, and the current access and travel restrictions, Nu-West anticipates it likely will be unable to timely perform the routine groundwater sampling required by the Consent Order.

Recognizing the health risks presented by the novel coronavirus, the impact of state and local government work and travel restrictions, and facility-specific Covid-19 policies and procedures, EPA and the Idaho Department of Environmental Quality (IDEQ) have released guidance acknowledging that flexibility may be warranted in complying with certain environmental responsibilities. See e.g., EPA's March 26, 2020 guidance "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," IDEQ's April 8, 2020 guidance "COVID-19 Regulatory Flexibility and Compliance Assistance," and EPA's April 10, 2020 guidance "Interim Guidance on Site Field Work Decisions Due to Impacts of Covid-19" (specifically advising that routine sampling activities not providing a near-term reduction in human health risk may be more strongly considered for delay, suspension, or rescheduling).

### Nu-West Response

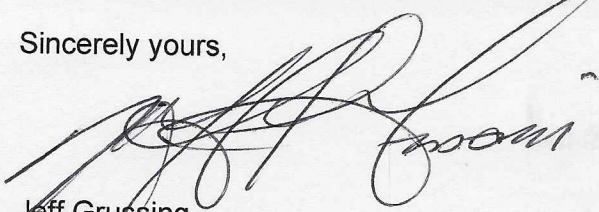
Because of the above, Nu-West has instructed WSP USA Inc., its contractor carrying out the terms of the Consent Order, to temporarily suspend field activities. Nu-West intends to resume field activities related to the groundwater monitoring program after the Self-Isolation Order is rescinded, after site access restrictions are lifted and reasonable access can be confirmed, and after adequate personnel health and safety measures can



be put in place. (While impossible to know for certain, we anticipate the suspension may include the entire second quarter – i.e., April through June).

Thank you for your attention to this notice. Please don't hesitate to contact me if you have any questions or require additional information.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Jeff Grussing', with a stylized, cursive script.

Jeff Grussing  
Director Environmental Operations, Nutrien  
Project Coordinator, Nu-West Industries, Inc.

cc: Natalie Creed, IDEQ  
Lynne Davies, EPA  
Carlyle Miller, Itafos Conda LLC  
Timothy Vedder, Itafos Conda LLC  
P. Scott Burton, Hunton Andrews Kurth